

*Yes now 3/5/52*

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**ARIZONA ATTORNEY GENERAL**

Arizona Game and Fish Commission  
Arizona State Building  
Phoenix, Arizona

Gentlemen:

With your letter of February 13, you enclose a copy of a proposed revision of the Orders of the Arizona Game and Fish Commission and ask the following two questions:

1. Does the Commission have the authority to establish the regulation?
2. Are the Orders in conflict with any statutes now on the books?

We will discuss the orders individually and will refer only to those to which there may be some objection.

1. In Order Number P-4, we believe the reference to Section 57-150 is a typographical error and that the section intended to be referred to is Section 57-115.

2. Order Number P-5 is apparently issued pursuant to the provisions of Section 57-119, ACA 1939 as amended. This section provides that in order to act as a guide, a person must procure a proper license and cannot procure such license "without first satisfying the Commission of his reliability." We are of the opinion that the order requiring that no license will be issued to a guide without written recommendation of the game ranger in the district where the applicant lives or is to act as a guide is in effect an unlawful delegation of the duties of the Commission. Such recommendation could very well be required by the Commission as part of the application but the Commission must act on each individual application and apply its own judgment as to whether the person is reliable within the meaning of the statute.

3. Order Number P-7, we believe, is contrary to the second paragraph of Section 57-113, ACA 1939 as amended. This statutory provision allows individuals to transport into this

State game animals which are lawfully taken without the state providing they are accompanied by evidence by the state or country wherein taken showing that they are lawfully taken. The attempt of Order P-7 to restrict this importation from Mexico is, we believe, contrary to the statute and not within the power of the Commission.

4. We are of the opinion that in Order Number P-9, the Commission has no authority to make an owner responsible for his dog which "molests" big game. Such responsibility, if any, is a matter of general law and an order of the Commission in this regard is of no force and effect.

5. Order Number P-10 is unnecessary since Section 57-109, ACA 1939 prohibits night hunting. It would therefore only be necessary that Order Number P-10 set forth the exception that raccoons may be hunted at night.

6. Order Number P-11 is unnecessary since the same prohibition is set out in Section 57-109, ACA 1939.

7. In reference to Order Number P-13, we wish to point out that the provision for paying an employee for unused annual leave after termination of his services is not possible. When the individual is no longer an employee of the State, he can be paid no monies for vacation time accrued or for annual leave accrued. Any such payments must be made prior to the time such individual is taken from active employment.

8. In reference to Orders Number P-17 and P-18, we are unable to render an opinion on them since we have no copies of the Nevada-Arizona Fishing Agreement or the California-Arizona Fishing Agreement.

9. As to Order Number P-19, we refer you to our Opinion Number 51-269 rendered to you on October 10, 1951. Based on this opinion, we seriously doubt if the Commission has authority to make an order such as P-19 here.

We trust that the foregoing will be sufficient for your

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Phoenix, Arizona

March 3, 1952  
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purposes and if we can be of any further help, please call upon us.

Very truly yours,

FRED O. WILSON  
Attorney General

CCS:GG

CHARLES C. STIDHAM  
Assistant Attorney General